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No. 83-1281

In the Supreme Court of the United States

OCTOBER TERM, 1983

ADOLFO SANCHEZ AND LUIS HERRERA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing an order suppressing evidence secured from a court authorized wiretap.

On March 10, 1983, petitioners were charged in one count of a 22-count-indictment returned in the United States District Court for the District of New Jersey with conspiracy to possess heroin with intent to distribute, in violation of 21 U.S.C. 846. Petitioner Sanchez was also charged with four counts of using a telephone to facilitate a conspiracy to possess heroin with intent to distribute, in violation of 21 U.S.C. 843(b). On June 14, 1983, the district court suppressed evidence obtained from a wiretap authorized by a state court judge. It held that the issuing court had erred in finding that the supporting affidavit established the requisite probable cause to support the wiretap order (Pet. App. 14a-69a). The court of appeals reversed, relying on *Illinois* v. *Gates*, No. 81-430 (June 8, 1983), and concluding

that the state court judge did not err in finding that the affidavit contained sufficient information to establish probable cause (Pet. App. 1a-13a).

Petitioners contend (Pet. 18-19) that the court of appeals applied the wrong standard of review. Petitioners also contend (*id.* at 19-23) that the affidavit for the search warrant did not establish probable cause to authorize the interception of the telephone calls. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to suppress. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If on the other hand petitioners are convicted and their conviction is affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of the final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MARCH 1984

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[1]It is now almost a year since the return of the indictment. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioners.

[2]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

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